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JUN 23 1997

Federal Communications Commission
Office of Secretary

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RE: WT Docket 97-82

Dear Mr. Caton:

Tennessee L.P. 121 (Tennessee) submits its comments in response to the Public Notice (Wireless Telecommunications Bureau Seeks Comment On Broadband PCS C And F Block Installment Payment Issues), WT Docket 97-82, DA 97-679, released June 2, 1997.

Tennessee is a limited partnership owned and controlled by three independent telephone companies or their affiliates. These three entities, which comprise Tennessee's designated control group, own all of the stock of its corporate general partner, and presently own all of its limited partnership interests as well.

Tennessee participated as a small business in the Commission's Personal Communications Service (PCS) auctions for the C Block and F Block. It was the high bidder, and was granted licenses, for the F Block licenses in three Basic Trading Areas (BTAs): Knoxville, TN; Cookeville, TN; and Clarksville, TN - Hopkinsville, KY.

Tennessee requests the Commission to make the following changes to its C and F Block financing rules: (1) amend the control group provisions in Section 24.709(b) of the Rules to reduce the minimum control group equity requirement to 15 percent and increase the equity exception for all non-control group entities to 49.9

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percent; and (2) establish the very same installment payment rates and conditions for all C and F Block licensees.

Control Group Minimum Equity Requirement

The recent public offering delays, bankruptcy filings, and staff reductions by several large C Block licensees have alarmed the financial community and made it difficult for unrelated C and F Block licensees to obtain the bank loans and vendor financing necessary to construct and operate their PCS systems. In particular, commercial bank loans are available, if at all, to smaller PCS licensees at interest rates substantially higher (as well as covenants significantly more restrictive) than could reasonably have been expected at the time of the DEF Block auction.

If loan financing remains scarce and expensive, the only viable financial alternative for small licensees is the offering and sale of equity to additional investors. Tennessee is not large enough to interest a bank or brokerage in underwriting a public offering of its limited partnership interests. However, if the control group restrictions of Section 24.709(b) were modified, Tennessee believes that it could raise additional equity capital from several (two to ten) additional investors (limited partners).

The primary obstacle to the equity funding alternative is the Section 24.709(b)(5) requirement that control groups retain a minimum of 25 percent of the licensee's equity. As larger and larger portions of a licensee's total capital are required to be raised as equity, this requirement will place a greater and greater

strain on the financial capacities of the small companies in the Tennessee control group and those of other small licensees. For example, assuming that the initial cost of constructing and placing a specific PCS system into operation is \$10 million, Section 24.709(b)(5) requires a control group to contribute \$500 thousand of equity in the event that 20 percent equity financing is possible, but mandates a control group equity contribution of \$1.25 million if 50 percent equity financing is needed.

Section 24.709(b)(5) allows C Block and F Block control groups to reduce their equity holdings from 25 percent to 15 percent in certain specified circumstances -- namely, where institutional investors, management employees and noncontrolling existing investors in preexisting entities hold the other 10 percent equity interest. However, these exceptions are not available to start-up entities like Tennessee and most other small PCS licensees. Institutional investors have little or no interest in investing in small C Block and F Block licensees, while most management employees do not have access to the hundreds of thousands or millions of dollars of assets needed for PCS investments.

If minimum control group equity of 15 percent is sufficient to protect the Commission's licensing interests in the specified Section 24.709(b)(5) circumstances, it should be adequate in all instances. Fairness requires that small PCS licensees like Tennessee -- which lack wealthy management employees and pre-existing investors, and which are unable to attract institutional investors -- should not be burdened with substantially higher

minimum equity requirements than other PCS licensees able to satisfy these contrived exceptions. In fact, a 15 percent control group equity interest in Tennessee's situation -- where the control group holds all of the stock of the licensee's corporate general partner -- assures that the Tennessee control group will maintain actual and effective control of its PCS licenses to a far greater extent than permissible situations where an institutional investor might be induced to take 10 percent of the "control group" equity.

The other obstacle to equity funding is the Section 24.709(b)(3) limit of 25 percent on the equity holdings of most non-controlling investors. Whereas Section 24.709(b)(4) permits non-controlling investors to acquire up to 49.9 percent of a C Block or F Block licensee's equity where the control group holds at least 50.1 percent of such equity, Section 24.709(b)(3) limits non-controlling investors to a maximum of 25 percent equity in all other instances.

The financial problems of the large C Block licensees have also turned this limitation into a serious hardship for small PCS licensees. The pool of interested equity investors has significantly decreased, while most potential PCS investors want more than 25 percent of the ultimate profits if they are to risk their capital at the present time. Moreover, the Section 24.709(b)(6) control group equity requirement (50.1 percent) needed to support larger investor interests now entails substantially larger control group capital contributions.

If a 49.9 percent investor equity maximum is sufficient to

protect the Commission's C Block and F Block licensing interests in some circumstances, it should be adequate for limited partnerships and other entities in all instances. Fairness requires that all C Block and F Block licensees have access to potential investors who want a 25-to-49.9 percent share of ultimate PCS profits, not just the few PCS control groups that can afford to maintain a 50.1 percent equity position.

In Tennessee's case, it is possible that it can obtain two additional 30-to-40 percent limited partners if the 25 percent limit of Section 24.709(b)(3) is eliminated or increased to the 49.9 percent level of Section 24.709(b)(4). These larger investors would be limited partners, and would not affect the Tennessee control group's operation of its PCS licenses via the corporate general partner. While not impairing the Commission's licensing goals and policies, these larger limited partners would enable Tennessee to raise the equity capital necessary to construct and commence operation of its PCS systems at an early date.

Tennessee emphasizes that the need for the proposed modifications of the control group requirements were not foreseen or reasonably foreseeable at the time that it organized its limited partnership, prepared its business plans or participated in the C Block and F Block auctions. Rather, the need for modification is the direct result of the financial community's adverse reaction to the strategies and recent difficulties of several large C Block licensees. Even though Tennessee and other small licensees did not bid too high prices for too many large C Block licenses, they are

being severely impacted by the resulting decrease of available loan funds, and the high interest rates and stringent terms for the loans remaining available. The Commission can enable Tennessee and other small licensees to proceed with the development of their PCS operations by relaxing its control group requirements to allow them to raise the necessary capital via the sale of additional equity interests if loans continue to be limited or unavailable.

Equal Interest Rates And Terms

C Block and F Block licensees must compete with each other, as well as other PCS and cellular licensees, in each BTA. If such competition is to be viable and fair, the Commission should impose the same installment interest rates, terms and conditions upon all C Block and F Block licensees.

At the present time, the Commission has imposed at least two different installment interest rates upon C Block licenses. The first group of C Block licenses granted (those which were unopposed) were assessed a 7.0 percent interest rate, while a second group of C Block licensees (which had been the subject of petitions to deny for various real or alleged defects) were assessed a lower 6.5 percent interest rate. It is Tennessee's information and belief that the F Block licenses may be issued in two or more groups, and that they may be assessed still different interest rates.

The Commission should maintain strict competitive neutrality in wireless markets, as well as broad telecommunications matters.

Because the interest costs of their installment notes comprise a substantial expense for C Block and F Block licensees, the Commission should not tilt the PCS playing field by charging different interest rates to different competing C Block and F Block licensees. It particularly should not do so because the vagaries of auction scheduling or application processing result in grant of competing licensees on different dates. Rather, both equity and competitive neutrality require that all C Block and F Block licensees pay the same interest rate.

In addition, it should be noted that all C Block and F Block installment notes will be paid over predominately overlapping 10-year periods, and therefore will entail the same "cost of money" to the Treasury during virtually their entire 10-year terms. This constitutes yet a second legal and equitable reason for identical interest rates for all C Block and F Block licensees.

Tennessee further notes that F Block licensees have been required to make 20 percent downpayments on their winning bids, whereas C Block licensees were required only to make 10 percent downpayments. This requirement has deprived F Block licensees of equity capital which they urgently need to construct their systems, and has placed them at a competitive disadvantage vis-a-vis their C Block counterparts. As part of the current restructuring of C Block and F Block installment obligations, the Commission should eliminate the difference in the downpayment requirements for the C Block [Section 24.711(a)(2)] and F Block [Section 24.716(a)(2)], and refund the additional 10 percent downpayment paid by F Block

licensees.

Conclusion

For the reasons set forth above, the Commission is requested: (a) to amend Section 24.709(b) to reduce the minimum control group equity requirement to 15 percent; (b) to amend Sections 24.709(b)(3) and (4) to increase the equity exception for all noncontrol group entities to 49.9 percent; (c) to assess the very same interest rate for all C Block and F Block installment notes; and (d) to amend Section 24.716(a) (2) to reflect the same 10 percent downpayment required from C Block licensees, and to refund the additional 10 percent downpayment paid by F Block licensees.

Respectfully submitted,

TENNESSEE L.P. 121

By Herbert R. Bivens
Herbert R. Bivens

Vice President of General Partner

Dated: 6/23/97